JOHORE REPORTS.

[APPELLATE CIVIL JURISDICTION]
MILLS, J.
June 14, 1936.

P. R. M. S. M. RAMASAMY PILLAI..Appellant.

v.

HASHIM BIN HAJI KECHIL.....Respondent.

[BATU PAHAT MAGISTRATE'S CIVIL APPEAL No. 3 of 1936].

Practice—execution—attachment and sale of lands—exemption—meaning of "agriculturist"—estoppel—Civil Procedure Code, Section 283 (i) Proviso (c).

The respondent borrowed from the appellant a sum of $500 and deposited with the appellant the issue document of title of 3 pieces of land as security for the loan. The respondent having defaulted in payment, the appellant sued, and obtained judgment against, the respondent Thereafter the appellant caused to be attached and sold 2 out of the 3 pieces of land. The proceeds of sale was insufficient to satisfy the judgment debt. The appellant then applied for attachment and sale of the third piece of land but the application was resisted by the respondent who claimed that the land was exempted from process of execution under section 283 (i) Proviso (c) as being land belonging to an "agriculturist" within the meaning of the section.

Held, that the word "agriculturist" includes persons who work on land to any appreciable extent, although they derive no subsistence or livelihood from it.

Held further, that in Johore a person is entitled to the benefits of the exemption if either on the day when judgment is given against him or at any time between that day and the day on which his application for exemption is heard and determined, he either gains an appreciable portion of his livelihood, or devotes an appreciable amount of his labour to, agriculture, and that as to what is "appreciable" each case must be considered on its own facts.

Held also, that the respondent was an agriculturist.

Somasundaram Chetty v. Ong Yeo Seng & ors. (1931—1932) F. M. S. L. R. 295; 1 M.L.J. 113 referred to and distinguished.

Held nevertheless, that the respondent was estopped from claiming immunity from execution on his land after having given the land to the appellant as security for the debt, and that the application for exemption could not be entertained.

APPEAL from an order made by Mr. K. G. A. Dohoo, Magistrate, Batu Pahat, on the 14th March 1936, dismissing the appellant's application for leave to execute a decree against the respondent by attachment and sale of a certain land E.M.R. 257. The appeal was heard before Mills, J. at Batu Pahat on the 2nd May, 1936.

The facts of the case and the grounds of appeal appear sufficiently from the judgment of Mills, J.

Das for plaintiff-appellant.

Defendant-respondent was unrepresented.

Cur. Ad. Vult.

MILLS, J.—The facts in this case are not in dispute:—

The respondent borrowed $450 from the appellant and promised to make three pieces of land liable as security for the loan:

The details of these lands were as follows,

E.M.R. 256, 20 poles in area, vacant land,

E.M.R. 298, 1 acre 0 rood 10 poles in area, planted with rubber and fruit trees,

E.M.R. 257, 1 rood 30 poles in area, containing 1 mangosteen tree and a house necessary to shelter the respondent and his family:

the appellant got judgment for the debt; and procured the attachment and sale of the lands E.M.R. 256 and 298, which, however, did not realize sufficient to pay off the debt: the appellant then applied for the attachment and sale of the land E.M.R. 257: the respondent claimed that according to Section 283 (i) Proviso (c) of The Civil Procedure Code such property "shall not be liable" to attachment and sale, as being comprised within the expression

> "houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him."

The Magistrate heard the application on the 14th March, 1936; he records "Applicant says on the land is a house, and one mangosteen tree. He is a fisherman and odd job man": the Magistrate allowed the application on two grounds.

(a) "the one fruit tree made the defendant an agriculturist: and land is only under ½ acre in area and there is not room for more cultivation.

(b) "at the time of the first making of the application the defendant had just over one acre of rubber land and can, therefore, be presumed to have been an agriculturist. It would make Section 265 (i) (c) completely meaningless if a plaintiff was able to sell up all the land of an agriculturist except the piece on which stood his house, drive him to fishing or any other pursuit in order to get a living and then sell up the remaining piece of land because he had ceased to be an agriculturist."

The appellant appealed on two grounds

(a) the respondent was not an agriculturist.

(b) as the respondent had deposited the issue document of title as security for the loan he was not entitled to the benefit of the exemption.

In support of ground (a) Counsel for the appellant contended that "the test is, in each case, what is the chief source of his livelihood"; cf. *Chitaley and Rao.* The Code of Civil Procedure. (1932). p. 574.

In support of ground (b) Counsel for the appellant contended that the exemption can be waived by the judgment-debtor and that if the judgment-debtor agrees to give his land as security, he cannot claim the exemption subse-

quently; alternatively, he is estopped from claiming the exemption.

I took time to consider these arguments as I wished to study the reports of the Indian decisions, since I was not convinced as to ground (a) that the test accepted in India was the only test or the correct test to be applied in Johore, and as to ground (b) that the judgment-debtor could waive the exemption.

I now consider ground (a).

I find that the Indian Courts have, during the last decade or so, radically changed their views regarding the interpretation of the corresponding Indian Section, No. 60.

In 1925 it was held in Madras that the word "agriculturist" "is used to denote a person making his living by tilling the soil, in other words one whose sole means of livelihood is gained by cultivating land" (cf. I.L.R. 49 Madras 227), and this view was still held in Oudh in 1931 (cf. A.I.R. 1932 Oudh 76).

In Nagpur, however, it was doubted in 1928 whether it was correct to adopt the criterion that agriculture must be the main source of subsistence (cf. A.I.R. Nagpur 23). In Nagpur in 1931, the Madras case was dissented from and it was held that a judgment-debtor may be an agriculturist although the cultivation of land is not his sole means of livelihood, and it was held further that a judgment-debtor is an "agriculturist" if he gains a substantial portion of his livelihood by cultivation (cf. A.I.R. 1931 Nagpur 8).

In Allahabad in 1931, it was decided that no hard and fast rule can be laid down for cases where a person cultivates his own land and the aggregate income derived from his labour and ownership of land is spent on the maintenance of himself and his family; but that each case must depend on its own circumstances. (cf. A.I.R. 1931 Allahabad 20).

There is only one reported Johore case on this subject: the Court of Appeal held (1) that a person engaged in the cultivation of rubber trees is a person engaged in agriculture, (2) that the words "immediately appurtenant" only include the land appurtenant to the building and necessary for the enjoyment of the house itself: cf. *S. V. R. Y. Somasundram Chettiar* v. *Ong Yee Seng* and others, 1931-2 Federated Malay States Law Reports p. 295, 1 M.L.J. 113. It is to be noted that in that case the Court of Appeal was not concerned with any question of "sole means of livelihood" or "main source of subsistence" or "substantial portion of his livelihood," so the opinions of the judges on that point do not bind me in the present case. The Chief Justice does not mention the point at all; he merely refers to "a person engaged in agriculture." Burton J. adopts, and in the Court of Appeal Whitley J. quotes, for the purpose of the case then before the Court, the view of certain earlier Indian cases (1923 and earlier) that the word "agriculturist" "must be limited to the peasant farmer class who live on the fruits of the occupied land by their own personal exertions and generally without hired labour, the class of common agriculturists who till the field and whose main source of livelihood is the personal cultivation of their own small holding." But it is clear that the Court of Appeal did not confine itself within the four corners of that view: the Chief Justice says "The real difficulty arises through the forced application of an English word to subject-matter (rubber trees) which does not exist in England," so he extends the exact meaning of the word "agriculture" to comply with conditions in Johore: and Whitley, J. eventually discards the Indian view, "it follows in my opinion that agriculturist in Section 265 should include not only the tiller of the soil but also any small holder who earns his livelihood from the produce of his small holding whether that produce be padi, bananas, pineapples, coconuts or rubber."

Obviously the expression "till the field" is quite inapposite to rubber cultivation: and the Courts of Johore must construe the word "agriculturist" *vis-a-vis* conditions in Johore, not conditions in England or India: the Indian decision last quoted appears to contemplate the case of a farmer who relies for his main source of livelihood on the cultivation of plough-land for the production of annual crops of cereals; though the Nagpur and Allahabad cases of 1931 appreciate that an agriculturist may have more than one source of livelihood and that where he has more than one source, it depends on the circumstances of each case whether or not he is an "agriculturist" within the meaning of the exemption.

What are the conditions in Johore which make the Indian decisions inapplicable?

In the first place, the standard constituted by the "source of livelihood" must be discarded in certain cases because the cultivation of coconuts or rubber will not produce any livelihood at all for at least 5 years: it is common knowledge that in the opening of a rubber plantation the most strenuous labour is required in the first 6 or 12 months—depending on the area of the land and the number of labourers engaged on it—. when the land must be felled, burnt, cleared, and planted: no reasonable person would contend that a man engaged in those occupations was not an "agriculturist," yet during the period of such engagement the land produces no subsistence or livelihood at all. It appears to me, therefore, that the word "agriculturist" must be interpreted to include persons who work on the land although they derive no subsistence or livelihood from it.

In the second place, one of the two outstanding features of Malayan conditions is the multiplicity of occupations followed by a single indivi-

dual: "Thus a Malay peasant may plant rice and grow rubber and fruit trees on his own holding, and may, in addition, be a fisherman and a bullock-carter, or a hire-car owner and driver. A Chinese may own and manage a general store and a rubber estate, breed pigs, deal in rubber, and run a billiard saloon" (cf. A Report on the 1931 Census, British Malaya. p. 97).

It appears to me, therefore, that the word "agriculturist" must be interpreted to include persons who work on the land to any appreciable extent.

Furthermore, I entirely agree with the Magistrate that the purpose of the exemption would be completely stultified if, as he expresses it, "a plaintiff was able to sell up all the land of an agriculturist except the piece on which stood his house, drive him to fishing or any other pursuit in order to get a living and then sell up the remaining piece of land because he had ceased to be an agriculturist." As a plaintiff may apply to levy execution directly he gets judgment, it appears to me that a defendant is entitled to benefit by the exemption if he is an "agriculturist" on the day when judgment is given against him: and it is clear that he is entitled to benefit if he is an "agriculturist" at the time when his application for exemption is heard and determined.

My conclusion is that in Johore a person is entitled to the benefits of the exemption if either on the day when judgment is given against him or at any time between that day and the day on which his application for exemption is determined, he either gains an appreciable portion of his livelihood from, or devotes an appreciable amount of his labour to, agriculture.

I do not think it is possible to lay down a hard and fast rule as to what in all cases is "appreciable": I agree with the appellant that the cultivation of one mangosteen tree is not appreciable; on the other hand it is not denied that since the date of judgment the respondent cultivated rubber and fruit trees on E.M.R. 298: I hold that that cultivation is "appreciable."

I therefore hold that the respondent was an agriculturist.

I now consider ground (b).

It has been held in India that as this exemption has been introduced for the benefit of the judgment-debtor, it is competent for him to waive it: I respectfully feel a difficulty in going to the length of holding that certain property is liable to attachment when the law says that it "shall not be liable to attachment."

But I think that the appellant's objection can properly be based on the ground of estoppel; in some of its aspects the doctrine of estoppel is perhaps somewhat technical, but its application in the circumstances of the present case is a matter which I think even a Malay peasant can understand: the argument, in effect, is this; the respondent promised that he would make his land liable as security for the loan; on the strength of that promise the appellant lent the respondent $450: it is inequitable that the respondent should now be heard to say that he wished to break his promise and to prevent his land being made liable as security for the loan.

I agree with that argument.

I hold that it is equitable that the Court should refuse to hear the respondent's application that the land should be freed from liability in respect of the loan. Accordingly, I hold that the application for exemption cannot be entertained. and therefore the land E.M.R. 257 is not exempted from being sold in execution of the decree.

I allow the appeal and reverse the Magistrate's decision. As the question of estoppel was not raised before the Magistrate, I make no order as to costs.

Appeal allowed.

Solicitors for plaintiff-appellant—*Goho & Co.*